

**REMARKS**

The present amendments and remarks are responsive to a Final Office Action mailed April 18, 2005, where the Examiner has rejected claims 1-18. This Final Office Action replaces a previous Final Office Action mailed 12/15/2005, which has now been withdrawn. Herein, applicant has amended independent claims 1 and 11. Reconsideration and allowance of pending claims 1-18 are respectfully requested in view of the following remarks.

The Examiner is respectfully requested to enter the amendments to claims 1 and 11 as these amendments are believed to bring the claims into a form for allowance. Alternatively, the presented amendments place the claims in better condition for appeal. As more fully discussed below, the amendments to claims 1 and 11 simply add limitations similar to limitations previously presented in claim 10. Accordingly, no new issues can be raised by the current proposed amendment.

**A. Response to Rejection Under 35 USC 103(a) of Claims 1-5, 8-9, 11-12, and 14-17.**

The Examiner still has not addressed the ordering deficiencies of the cited references as shown by the applicant. In its Response to the June 23, 2005 Office Action, the applicant shows the importance of ORDERING in at least the following discussions:

1. page 7 , line 22 to page 9, line 3 (about 42 lines of ordering discussion regarding independent claim 1)
2. page 9, lines 19 to 28 (about 10 lines of ordering discussion regarding independent claim 1)
3. page 11, lines 11 to 27 (about 16 lines of ordering discussion regarding independent claim 11)

Thus, in just about 6 pages of Remarks, the applicant has provided at least 68 lines (almost 3 pages in the aggregate) of argument that distinguish the claimed invention based on the claimed ordering process. Although this ordering

discussion consumed almost half of the Remarks section, the Examiner did not even respond to the ordering discussion. Importantly, the Examiner does not make any citation to any reference that shows the claimed ordering. Of course, if the Examiner believes that the claimed ordering may be found in the references, then the applicant requests that the Examiner specifically make such a rejection. In this way, prosecution of this application can be advanced by clearly identifying an issue for appeal.

Although the applicant believes that claims 1 and 11 are allowable as originally filed, to speed prosecution, the applicant has proposed amending claims 1 and 11 to further illuminate the claimed ordering. The specific proposed amendments are discussed below.

#### 1. Independent claim 1

In paragraph 1 of the Office Action, the Examiner rejects claims 1-5, 8-9, 11-12, and 14-17 under 35 USC 103(a) as being unpatentable over US Patent Number 6,590,887 ("Lee") in view of US Patent Number 5,249,220 ("Moskowitz").

The applicant has amended independent claim 1 to include the limitation of *"selecting an optimal encoding format ... , the selection being made without encoding the SMS message"*. This limitation is similar to a limitation previously in claim 10, so no new matter has been added. The applicant respectfully submits that Lee and Moskowitz, either alone or in combination, fail to disclose this limitation. For example, Moskowitz teaches an OPPOSITE process as illustrated in the two citations from Moskowitz duplicated below (emphasis added):

#### **12**

5      nication system, there are a number of different character coding representations from which the transmitter may select. The transmitter encodes the message that is to be sent to the receiver according to each format. The format which requires the fewest number of binary bits to represent the entire message is selected as the character encoding format. The binary bit representation is then serialized and "queued", or regrouped, as four-bit nibbles. The transmitter then sends out DTMF tones

Moskowitz, column 12, lines 1-9

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FIG. 16 illustrates the operational flow chart of the transmitter sending messages with the above identified encoding methods. Once the transmitter has received a transmission request the transmitter needs to determine if the character set of the message to be transmitted can be defined by four-bit encoding. If so, it will decode the message and begin transmission. Otherwise the transmitter will have to encode the message according to the five, six, and variable-bit encoding methods and determine which is the most efficient mode of transmission, i.e. which mode requires the smallest number of binary bits to represent the message.

Moskowitz, column 13, lines 34-45

These citations disclose a process opposite of the claimed invention. For example, the first citation states "*The Transmitter encodes the message ... according to **EACH** format*" (emphasis added); and the second citation states "*Otherwise the transmitter will have to encode the message according to the five, six, **AND** variable-bit encoding messages and determine which is the most efficient...*" (emphasis added). In this way, Moskowitz discloses determining a memory usage requirement 1) By FIRST ENCODING the message to multiple standards, 2) and then analyzing the MULTIPLE ENCODED MESSAGES to determine which format actually used the fewest number of bits. This is in sharp contradiction to the limitation specified by claim 1, which recites "the selection being made **without encoding** the SMS message" (emphasis added). According, Moskowitz is incapable of disclosing this limitation.

Since Lee and Moskowitz, either alone or in combination, fail to disclose all the limitations of amended claim 1, the applicant submits that claim 1 is not rendered obvious. Accordingly, claim 1 and its dependent claims 2-5 and 8-9 are believed to be in a condition for allowance.

## 2. Independent claim 11

The applicant has amended independent claim 11 to include the limitation of "*wherein the optimizing signal is generated without encoding the SMS message*". This limitation is similar to a limitation previously in claim 10, so adds no new matter. The applicant respectfully submits that Lee and Moskowitz,

either alone or in combination, fail to disclose this limitation. For example, Moskowitz teaches an OPPOSITE process as fully discussed in Section A(1) above.

Since Lee and Moskowitz, either alone or in combination, fail to disclose all the limitations of amended claim 11, the applicant submits that claim 11 is not rendered obvious. Accordingly, claim 11 and its dependent claims 12 and 14-17 are believed to be in a condition for allowance.

### **B. Response to Rejection Under 35 USC 103(a) of Claim 10.**

In paragraph 2 of the Office Action, the Examiner rejects claim 10 under 35 USC 103(a) as being unpatentable over US Patent Number 6,760,882 ("Gesbert") in view of US Patent Number 5,249,220 "Moskowitz") and further in view of US Patent Number 5,729,610 ("Ishida").

#### **1. Moskowitz Does Not Teach "Determining a Memory Usage Requirement Without Encoding the SMS Message".**

The Examiner finds that Gesbert does not disclose "determining a memory usage requirement of the SMS message without encoding the SMS message", and cites to Moskowitz for this limitation. More particularly, the Examiner refers to the following two citations to find "Moskowitz's ideas of determining the number of bits needed with Gesbert's system in order to be able to select the smallest number of bits for encoding message" (Office Action, page 9, lines 10-12). The two citations are duplicated below for convenience.

#### **12**

nication system, there are a number of different character coding representations from which the transmitter may select. The transmitter encodes the message that is to be sent to the receiver according to each format. The format which requires the fewest number of binary bits to represent the entire message is selected as the character encoding format. The binary bit representation is then serialized and "queued", or regrouped, as four-bit nibbles. The transmitter then sends out DTMF tones

Moskowitz, column 12, lines 1-9

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FIG. 16 illustrates the operational flow chart of the transmitter sending messages with the above identified encoding methods. Once the transmitter has received a transmission request the transmitter needs to determine if the character set of the message to be transmitted can be defined by four-bit encoding. If so, it will decode the message and begin transmission. Otherwise the transmitter will have to encode the message according to the five, six and variable-bit encoding methods and determine which is the most efficient mode of transmission, i.e. which mode requires the smallest number of binary bits to represent the message.

Moskowitz, column 13, lines 34-45

The applicant respectfully submits that the Examiner has mischaracterized the teachings in these citations, and the citations actually disclose a process opposite of the claimed invention. For example, the first citation states "*The Transmitter encodes the message ... according to **EACH** format*" (emphasis added); and the second citation states "*Otherwise the transmitter will have to encode the message according to the five, six, **AND** variable-bit encoding messages and determine which is the most efficient...*" (emphasis added). In this way, Moskowitz discloses determining a memory usage requirement 1) By FIRST ENCODING the message to multiple standards, 2) and then analyzing the MULTIPLE ENCODED MESSAGES to determine which format actually used the fewest number of bits. This is in sharp contradiction to the limitation specified by claim 10, which recites "determining a memory usage requirement of the SMS message without encoding the SMS message" (emphasis added). According, Moskowitz is incapable of disclosing this limitation.

Since Moskowitz does not disclose the limitation as presented by the Examiner, the applicant respectfully requests that the Examiner withdraw the rejection of claim 10, and issue a notice of allowance for this claim.

**C. Response to Rejection Under 35 USC 103(a) of Claims 6 and 18.**

In paragraph 3 of the Office Action, the Examiner rejects claims 6 and 18 under 35 USC 103(a) as being unpatentable over US Patent Number 6,590,887 ("Lee") in view of US Patent Number 5,249,220 "Moskowitz") and further in view of US Patent Number 5,844,922 ("Wolf").

The applicant respectfully submits that dependent claims 6 and 18 are allowable based on their dependency from independent claims 1 and 11, which are believed to be in a condition for allowance, as fully set forth in Section A.

**D. Response to Rejection Under 35 USC 103(a) of Claim 7.**

In paragraph 4 of the Office Action, the Examiner rejects claim 7 under 35 USC 103(a) as being unpatentable over US Patent Number 6,590,887 ("Lee") in view of US Patent Number 5,249,220 "Moskowitz"), in view of US Patent Number 5,844,922 ("Wolf"), and further in view of US Patent Number 6,539,118 "Murray".

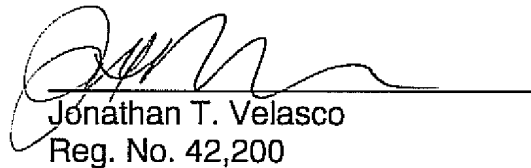
The applicant respectfully submits that dependent claim 7 is allowable based on its dependency from independent claim 1, which is believed to be in a condition for allowance, as fully set forth in Section A.

**E. Conclusion**

The applicant believes the pending claims are patentably distinguishable over the references of record. For all the foregoing reasons, allowance of claims 1-18 pending in the present application is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

Dated: June 14, 2006

  
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